

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3557 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ANILKUMAR B BARIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3557 of 1992
MR SV RAJU for Petitioner No. 1
MR DILIPSINH RAHEVAR for Petitioner No. 1
MS ARCHANA RAVAL, AGP, for Respondent No. 1-3
RULE SERVED BY DS for Respondent No. 4
RULE SERVED for Respondent No. 5-6
MR SK PATEL for Respondent No. 7
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/07/2003

ORAL JUDGEMENT

1. Heard, learned Advocate, Mr. S.V. Raju, for the

petitioner, learned Assistant Government Pleader for respondent No.1-State of Gujarat and Mr. S.K. Patel for respondent No.7.

2. The order impugned cancels an earlier certificate issued by Executive Magistrate in favour of the petitioner, certifying to be a person belonging to Scheduled Tribe, which is at Annexure-I. The impugned order is passed by Director, Social Welfare, after taking into consideration various aspects.

3. Learned Advocate, Mr. Raju, has drawn attention of this Court to various aspects which are relevant for deciding the question whether the petitioner can be treated as a person belonging to Scheduled Tribe. There are various disputed questions which will have to be established and indicated by the petitioner in order to assail and establish the order as illegal, improper or incorrect, which exercise, this Court would not like to undertake while exercising powers under Article 226 of the Constitution of India.

4. Under the circumstances, in the opinion of this Court, this petition can be disposed of by relegating the petitioner to the authority of the "Scrutiny Committee" under the Chairmanship of the Additional Secretary, Tribal Development Department of State Government or which will examine all questions and contentions that may be raised before it and decide on the correctness or otherwise of the impugned order. This Court makes no observations on various contentions raised by Mr. Raju with a view that it may not influence the decision making process by the authority to whom the petitioner is relegated.

5. Mr. Raju states that the petitioner will approach the Scrutiny Committee working under the Chairmanship of Additional Secretary, Tribal Development Department with appropriate application/appeal within 15 days from today. On the application/appeal being made, the same shall be decided in accordance with law as early as possible, preferably, within a period of four months. With the above direction, the petition shall stand disposed of. Rule is discharged.

6. Learned Advocate for the petitioner states that the petitioner is under protection of this Court on account of the interim relief granted earlier. He, therefore, prays that the interim relief may be continued till the said Scrutiny Committee decides the application/appeal of the petitioner, otherwise the

petitioner may be removed from service. The request seems to be reasonable and is, therefore, accepted. The protection granted to the petitioner by way of interim relief shall continue till the final decision by the Scrutiny Committee is rendered. It is also clarified that in the event the said Scrutiny Committee decides against the petitioner, the said order may not be implemented for a period of 15 days from the date on which it is communicated to the petitioner.

7. Direct service is permitted.

[A. L. DAVE, J.]

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